

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION

OCEANIA III CONDOMINIUM
ASSOCIATION, INC.,

CASE NO.: _____
STATE CASE NO.: 2022-019099-CA-01

Plaintiff,

vs.

WESTCHESTER SURPLUS LINES
INSURANCE COMPANY and EVEREST
INDEMNITY INSURANCE COMPANY,

Defendants.

_____/

NOTICE OF REMOVAL

Defendant, WESTCHESTER SURPLUS LINES INSURANCE COMPANY (“WESTCHESTER”), by and through its undersigned counsel, pursuant to 28 U.S.C. § 1441(a), removes an action pending in the Circuit Court of the Eleventh Judicial Circuit of Florida, in and for Miami-Dade County, styled OCEANIA III CONDOMINIUM ASSOCIATION, INC. v. WESTCHESTER SURPLUS LINES INSURANCE COMPANY, Case No. 2022-019099-CA-01, where Plaintiff filed suit against WESTCHESTER, and further states:

1. Plaintiff filed a Complaint against WESTCHESTER and co-defendant EVEREST INDEMNITY INSURANCE COMPANY (“EVEREST”), in Miami-Dade County Circuit Court on or about October 4, 2022. On or about October 20, 2022, WESTCHESTER and EVEREST were served with a Summons and copy of the Complaint in connection with the state action. Plaintiff’s Complaint asserts that WESTCHESTER and EVEREST breached insurance contracts

issued to Plaintiff.¹ Pursuant to 28 U.S.C. § 1446 (b)(2)(A), EVEREST joins in and consents to the removal.

2. This Notice of Removal is filed in the United States District Court for the Southern District of Florida, Miami Division, the court for the district and division which embraces the state court where the removed state action was pending, and is filed within the time provided for the removal of actions to the United States District Court. *See* 28 U.S.C § 1446(b).

3. This Notice of Removal is timely filed pursuant to 28 U.S.C. § 1446(b) (“The notice of removal of a civil action or proceeding shall be filed within 30 days after the receipt by the defendant, through service or otherwise, of a copy of the initial pleading . . .”).

4. Pursuant to 28 U.S.C. § 1446(a), true and legible copies of all process, pleadings, orders, and other papers or exhibits of every kind filed with the state court are being filed with this Notice of Removal.

VENUE

5. Venue is proper in the United States District Court for the Southern District of Florida because the state court action originated in Miami-Dade County, Florida.

JURISDICTION

6. This Court has jurisdiction. The state court action is a civil action which falls under this Court’s original jurisdiction pursuant to 28 U.S.C. § 1332(a) because the parties are completely diverse and the amount in controversy exceeds \$75,000.00, exclusive of interest and costs. WESTCHESTER is entitled to remove this action pursuant to 28 U.S.C. § 1441.

¹ *See* attached Complaint (attached as **Composite Exhibit 1**), Florida Department Financial Services Summary (attached as **Exhibit 2**), and Policies attached as **Exhibit 3** and **Exhibit 4**.

COMPLETE DIVERSITY EXISTS

7. There is complete diversity between the Plaintiff, WESTCHESTER and EVEREST.

8. WESTCHESTER is, and was at the time the Complaint was filed in Florida state court, a foreign corporation, organized and existing under the laws of the State of Georgia, with its principal place of business located in the State of Pennsylvania.²

9. EVEREST is, and was at the time the Complaint was filed in Florida state court, a foreign corporation, organized and existing under the laws of the State of Delaware, with its principal place of business located in the State of New Jersey.³

10. Therefore, for purposes of determining diversity under 28 U.S.C. § 1332(c)(1), WESTCHESTER is a citizen of the State of Georgia and the State of Pennsylvania, and EVEREST is a citizen of the State of Delaware and the State of New Jersey.⁴

11. According to the Complaint, Plaintiff, OCEANIA III CONDOMINIUM ASSOCIATION, INC., is, and was at the time the Complaint was filed in Florida state court, a Corporation, incorporated in Florida, with its principal place of business in Sunny Isles Beach, Miami-Dade County, Florida.⁵ Therefore, for purposes of determining diversity jurisdiction under 28 U.S.C. § 1332(c)(1), Plaintiff is a citizen of the State of Florida.

² See Florida Office of Insurance Regulation Summary, attached as **Exhibit 5**.

³ See Florida Office of Insurance Regulation Summary, attached as **Exhibit 6**.

⁴ See Florida Office of Insurance Regulation Summary, attached hereto as **Exhibit 5** and **Exhibit 6**.

⁵ See Plaintiff's Complaint (attached hereto as **Composite Exhibit 1**) and Plaintiff's Corporation Information from Sunbiz.org (attached here to as **Exhibit 7**).

AMOUNT IN CONTROVERSY EXCEEDS \$75,000.00

12. WESTCHESTER issued a commercial property policy to Plaintiff under Policy No. D38073229-001 (hereinafter the “WESTCHESTER Policy”). The WESTCHESTER Policy period is from April 19, 2017, through April 19, 2018.⁶

13. EVEREST issued a commercial property policy to Plaintiff under Policy No. CA3P005825171 (hereinafter the “EVEREST Policy”). The EVEREST Policy period is from April 19, 2017, through April 19, 2018.⁷

14. Plaintiff’s Complaint asserts a cause of action for breach of contract, alleging that WESTCHESTER refused and continues to refuse to pay Plaintiff’s claim that occurred as a result of damage caused by Hurricane Irma on or about September 10, 2017.⁸ Plaintiff asserts that it suffered damages as a result of the loss and attorney’s fees.⁹

15. The amount in controversy, now and at the time the Complaint was filed in Florida state court, exceeds \$75,000.00, exclusive of interest and costs. The amount claimed by Plaintiff is \$13,789,490.96, based upon Plaintiff’s Proof of Loss.¹⁰

COMPLIANCE WITH 28 U.S.C. § 1446

16. Pursuant to the provisions of 28 U.S.C. § 1446, and S.D. Fla. Loc. R. 7.2, WESTCHESTER files copies of all process, pleadings, orders, and other papers or exhibits of every kind, including depositions, on file in the state court as of the date of this filing.¹¹

⁶ See WESTCHESTER Policy attached as **Exhibit 3**.

⁷ See EVEREST Policy attached as **Exhibit 4**.

⁸ See Plaintiff’s Complaint, attached hereto as **Composite Exhibit 1**.

⁹ See Plaintiff’s Complaint attached hereto as **Composite Exhibit 1**.

¹⁰ See Plaintiff’s Proof of Loss, attached hereto as **Exhibit 8**.

¹¹ See **Composite Exhibit 1**, and Miami-Dade County Clerk of Court Docket sheet (attached as **Exhibit 9**).

17. Pursuant to 28 U.S.C. § 1446(d), WESTCHESTER filed this Notice of Removal with this Court and is serving a copy of this Notice of Removal upon counsel for all parties. A true copy of this Notice of Removal is also being filed by WESTCHESTER with the state court where this action was pending and written notice will be given to all adverse parties “promptly after” the filing in this Court of this Notice of Removal, in full compliance with 28 U.S.C. § 1446(d).

18. Pursuant to 28 U.S.C. § 1446(d), WESTCHESTER provided written notice of the filing of the Notice of Removal, along with copies of this Notice of Removal and all attachments, to all adverse parties and with the Clerk of the Circuit Court of the Eleventh Judicial Circuit of Florida in and for Miami-Dade County.

WHEREFORE, WESTCHESTER respectfully requests that this Court (1) remove this action from the Circuit Court; (2) exercise jurisdiction over this matter as provided by law; and (3) place the action on the docket of this Court for further proceedings, the same as if this action had originally been executed in this Court.

Respectfully submitted this 9th day of November, 2022.

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/s/ Justin W. Sblano

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CERTIFICATE OF SERVICE

I certify that on November 9, 2022, I presented the foregoing to the Clerk of Court for filing and uploading to the CM/ECF system. A copy of the foregoing was forwarded to the following this same date:

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